

West is increasing its high-capacity prices; and (5) U S West's service quality is declining. Given the limited sources of competitive supply, and the fact that U S West has shown itself able to increase prices and reduce service quality, the Commission should find that U S West continues to possess market power in the Phoenix area market for high capacity services.

III. U S West's Petition Does Not Satisfy the Section 10 Criteria

The Commission should deny U S West's petition for forbearance because it fails to satisfy Section 10's three-part test. In denying U S West's petition, the Commission should also recognize that U S West's forbearance petition is in many respects the functional equivalent of a waiver petition: U S West is asking for relief restricted to U S West in a specific geographic area for a particular set of services. It is well-established that an applicant for waiver faces a high hurdle even at the starting gate.⁴⁰ The Commission should find that petitions for forbearance such as U S West's, which seek relief for a single carrier in a limited geographic area, must be dismissed if a petition for waiver would not be granted. To do otherwise would create inconsistent substantive standards for procedures that raise identical issues of law and policy.

⁴⁰WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

A. Dominant Carrier Regulation is Necessary to Ensure that U S West's High Capacity Rates and Practices are Just, Reasonable, and Not Unreasonably Discriminatory

In order to satisfy the first statutory criterion of Section 10, U S West is required to demonstrate that application of the Commission's price cap, tariffing, and rate averaging rules is not necessary to ensure that its rates and practices are just, reasonable, and not unreasonably discriminatory. Because, as discussed above, U S West continues to possess market power in the provision of high-capacity services in Phoenix, the Commission should conclude that U S West has failed to satisfy the Section 10(a)(1) criterion. The Commission has previously found that its price cap rules (or other forms of rate regulation) and dominant carrier tariff rules are not necessary only when a carrier does not possess market power.⁴¹

As long as U S West remains a dominant carrier, the price cap and tariff rules remain necessary to ensure that U S West's rates are just and reasonable. On most routes in the Phoenix MSA, customers of U S West's high-capacity services are unable to switch to alternative sources of supply. Due to the absence of price competition and choice among service providers on these routes, U S West has the ability and incentive to charge rates that are not just and reasonable. For this reason, the Commission must continue to apply its price cap rules, which are designed to produce dominant carrier rates within a zone of reasonableness.⁴² The Commission must also continue to apply its

⁴¹Comsat Order at ¶144.

⁴²In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Red 6786, 6787 (1990).

tariff rules. The advance notice and cost support requirements, for example, permit U S West customers and the Commission to challenge potentially unlawful rates before they become effective.⁴³

Similarly, the rate averaging requirements remain necessary to ensure that U S West's rates for high capacity services in the Phoenix MSA are not unreasonably discriminatory. Absent the rate averaging requirement, U S West could offer rates on routes that are subject to competition that are not generally available to similarly situated customers on routes not subject to competition. The Commission has previously found that such practices are unreasonably discriminatory in violation of Section 202(a) of the Act.⁴⁴

B. Dominant Carrier Regulation is Necessary for the Protection of Consumers

In order to satisfy the second statutory criterion of Section 10, U S West must demonstrate that application of the Commission's price cap, tariffing, and rate averaging rules is not necessary for the protection of consumers. Because the record shows that, absent regulation, U S West would have the ability and incentive to charge access rates that are not just and reasonable or are unreasonably discriminatory, and thus distort increase prices and distort competition in the interexchange market, the Commission's dominant carrier regulations remain necessary for the protection of consumers.

⁴³Comsat Order at ¶153.

⁴⁴In the Matter of Southwestern Bell Telephone Company Tariff F.C.C. No. 73, Memorandum Opinion and Order on Reconsideration, 13 FCC Rcd 6964, 6965 (1998).

C. Forbearance from Applying the Commission's Price Cap, Tariffing, and Rate Averaging Rules is Not Consistent with the Public Interest

In order to satisfy the third statutory criterion of Section 10, U S West is required to demonstrate that forbearance is consistent with the public interest. As the Commission has recognized, however, a firm with market power is able to engage in conduct that may be anticompetitive or otherwise inconsistent with the public interest.⁴⁵ This may entail setting price above competitive costs in order to earn supranormal profits, or setting price below competitive costs to forestall entry by new competitors or to eliminate existing competitors.⁴⁶

U S West contends that "symmetrical regulation of U S West and competitive providers as non-dominant carriers would serve the public interest by promoting competitive market conditions"⁴⁷ The Commission has, however, previously rejected the argument that dominant carriers should have precisely the same pricing flexibility freedoms as are accorded to CAPs and other new entrants, and has found it to be in the public interest to regulate incumbent dominant LECs and their competitors differently.⁴⁸

⁴⁵In the Matter of Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, First Report and Order, 85 FCC 2d 1, 21 (1980).

⁴⁶Id.

⁴⁷U S West Petition at 43-44.

⁴⁸SWBT RFP Tariff Rejection Order, 12 FCC Rcd at 19337.

IV. Pricing Flexibility Issues Should Be Examined, if at all, in a Rulemaking

Section 10 of the Act allows the Commission 12 months in which to deny a petition for forbearance for failure to meet the requirements of Section 10(a). The Commission should, however, deny U S West's petition as quickly as possible, in order to forestall a flood of "me too" petitions from other ILECs. The competitive conditions in the Phoenix market are typical of competitive conditions in other metropolitan areas: limited facilities-based competitive entry with circuits terminating to a few buildings in the central business district. Rejection of U S West's petition would make clear that this level of competition does not warrant forbearance from the Commission's dominant carrier regulations.

The limited competition in the Phoenix MSA and other metropolitan areas is consistent with the scope of competitive entry contemplated during the expanded interconnection proceedings. At this level of competition, the package of rule changes adopted in the expanded interconnection orders -- term and volume pricing authority and zone pricing authority -- continue to represent a "substantial but measured step in giving the LECs the ability to respond to competition, striking a reasonable balance between giving the LECs too little pricing flexibility or too much."⁴⁹ That the rules adopted in the expanded interconnection proceedings remain appropriate to the current level of competition is demonstrated by the fact that U S West and most other ILECs have not yet found any need to use their zone pricing authority.

⁴⁹In the Matter of Expanded Interconnection with Local Telephone Company Facilities, Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC Rcd 7374, 7424 (1993).

To the extent that the Commission believes that it is appropriate to examine further pricing flexibility for U S West and other ILECs, it should do so in the CC Docket No. 96-262 access reform proceeding. U S West should present its justifications for additional pricing flexibility as part of the updated record in that proceeding. Nothing in the record of this proceeding indicates that competitive conditions in the Phoenix MSA warrant special consideration. On the rare occasions when the Commission has allowed city-specific pricing flexibility, it has done so only after finding, for example, "factors [that] generally distinguish the economic conditions existing in the New York City metropolitan area from other areas in NYNEX's region and the remainder of the country."⁵⁰ Where, as in the case of the Phoenix MSA, competitive conditions are not distinguishable from those in other metropolitan areas, the Commission should address pricing flexibility issues on a national basis in a notice and comment rulemaking proceeding.

⁵⁰NYNEX USPP Order, 10 FCC Rcd at 7455.

V. Conclusion

For the reasons stated herein, the Commission should deny U S West's petition for forbearance.

Respectfully submitted,
MCI WORLDCOM, INC.



Alan Buzacott
Henry G. Hultquist
1801 Pennsylvania Ave., NW
Washington, DC 20006
(202) 887-3204

October 7, 1998

STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct Executed on October 7, 1998.



Alan Buzacott
Regulatory Analyst
1801 Pennsylvania Ave. NW
Washington, D.C. 20006
(202) 887-3204

CERTIFICATE OF SERVICE

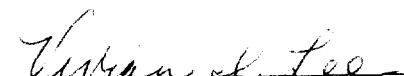
I, Vivian I. Lee, do hereby certify that copies of the foregoing Opposition were sent via first class mail, postage paid, to the following on this 7th day of October, 1998.

International Transcription Services**
1231 20th Street, N.W..
Washington, DC 20036

Jane Jackson**
Chief, Competitive Pricing Division
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, D.C. 20554

James T. Hannon
Jeffrey A. Brueggeman
U S West
Suite 700
1020 19th Street, N.W.
Washington, DC 20036

**HAND DELIVERED


Vivian I. Lee